IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2758 OF 2005

J.B.Patel & Ors. ...Petitioners
vs.
Brihan Mumbai Municipal
Corporation and others ...Respondents

Mr.J.S.Deo for the petitioners
Ms P.A.Purandare for respondent Nos.1 and 2
Mr.P.M.Havnur for Respondent Nos.3 & 4.

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : FEBRUARY 14,2006

P.C.:

1. Heard Mr.Deo in support of this Petition, Ms Purandare for Respondent Nos.1 and 2 and Mr.Havnur for Respondent Nos.3 and 4. The Petition is filed to challenge the notice dated 20th March 2003 issued by the B.M.C. under section 394 of the B.M.C.Act. It is annexed at Exh.F-2. The document at Exh.F-2 however shows that it is dated 20th May 2003. The notice directs the Petitioners not to carry on trade of manufacturing of eatables at their premises situated in Mangal Kunj Housing Society at Bandra (West). Mr.Deo for the Petitioners submitted that the Petitioners want to run their business of one shop on the ground floor of the society. He submitted that notice under Section 394 is not called for.

2. Mr.Havnur for Respondent Nos.3 and 4 has pointed out that Respondent No.3 is a old lady staying on the first floor which

is just above the shop of the Petitioners. Respondent Nos.3 and 4 have filed a suit in the City Civil Court at Mumbai on the ground of nuisance and various other pleas are also taken in that suit. Ad-interim injunction has been granted on 8th August 2005 which has been confirmed by the Single Judge of this court on 20th September 2005. The learned Single Judge has put in terms that the injunction is only in respect of cooking food or eatables in the suit premises. The order does not prevent the Petitioners from carrying on any other permissible activities which are excluding the cooking of foods or eatables in the suit premises. The notice given by the B.M.C. is in line with this order. We do not find anything erroneous in the notice given by the B.M.C. After appropriate orders are passed in the suit, it will be open for the Petitioners to apply for whatever licence, provided they satisfy the requirement under the relevant Municipal Rules. Petition is disposed of.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)